

32.909 Contractor inquiries.

(a) Direct questions involving—

(1) Delinquent payments to the designated billing office or designated payment office; and

(2) Disagreements in payment amount or timing to the contracting officer for resolution. The contracting officer must coordinate within appropriate contracting channels and seek the advice of other offices as necessary to resolve disagreements.

(b) Small business concerns may contact the agency's local small business specialist or representative from the Office of Small and Disadvantaged Business Utilization to obtain additional assistance related to payment issues, late payment interest penalties, and information on the Prompt Payment Act.

Subpart 32.10—Performance-Based Payments

SOURCE: 60 FR 49715, Sept. 26, 1995, unless otherwise noted.

32.1000 Scope of subpart.

This subpart provides policy and procedures for performance-based payments under noncommercial purchases pursuant to Subpart 32.1.

[72 FR 73220, Dec. 26, 2007]

32.1001 Policy.

(a) Performance-based payments are the preferred Government financing method when the contracting officer finds them practical, and the contractor agrees to their use.

(b) Performance-based payments are contract financing payments that are not payment for accepted items.

(c) Performance-based payments are fully recoverable, in the same manner as progress payments, in the event of default.

(d) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see Subpart 32.9). These payments shall be made in accordance with agency policy.

(e) Performance-based payments shall not be used for—

(1) Payments under cost-reimbursement line items;

(2) Contracts for architect-engineer services or construction, or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion; or

(3) Contracts awarded through sealed bid procedures.

[72 FR 73220, Dec. 26, 2007]

32.1002 Bases for performance-based payments.

Performance-based payments may be made on any of the following bases:

(a) Performance measured by objective, quantifiable methods.

(b) Accomplishment of defined events.

(c) Other quantifiable measures of results.

[72 FR 73220, Dec. 26, 2007]

32.1003 Criteria for use.

The contracting officer may use performance-based payments for individual orders and contracts provided—

(a) The contracting officer and offeror agree on the performance-based payment terms;

(b) The contract, individual order, or line item is a fixed-price type;

(c) For indefinite delivery contracts, the individual order does not provide for progress payments; and

(d) For other than indefinite delivery contracts, the contract does not provide for progress payments.

[72 FR 73220, Dec. 26, 2007]

32.1004 Procedures.

Performance-based payments may be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of \$1,000,000 each, has 10 deliverable items—the separate planes. A